

AMENDED IN ASSEMBLY AUGUST 26, 2003

AMENDED IN ASSEMBLY JULY 3, 2003

AMENDED IN SENATE APRIL 30, 2003

SENATE BILL

No. 966

Introduced by Senator Alarcon

February 21, 2003

An act to ~~add Section 1781 to~~ amend Section 1726 of, and to add Section 1781 to, the Labor Code, relating to prevailing wages.

LEGISLATIVE COUNSEL'S DIGEST

SB 966, as amended, Alarcon. Public works and prevailing wages: contractor's costs.

Existing law generally requires the payment of the prevailing rate of per diem wages and the prevailing rate for holiday and overtime work to employees employed on public works projects that cost more than \$1,000. Existing law requires the Director of Industrial Relations to determine these wage rates and to provide these wage rates to an awarding body, as defined, that requests them. Existing state regulations authorize an interested party, as defined, to request that the director make a determination regarding the applicability of these provisions to a particular project.

This bill would authorize a contractor to bring an action in a court of competent jurisdiction to recover from *an awarding body specified labor costs, penalties, and legal fees if certain conditions are met.*

This bill would also authorize a contractor to bring an action to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs, as defined, incurred by the contractor if certain conditions are met. For purposes

of these provisions—this provision, this bill would define “awarding body” to exclude the Department of General Services, the Department of Transportation, and the Department of Water Resources, and define “increased costs” to include, but not be limited to, labor cost increases required to be paid to the contractor’s workers and penalties for which the contractor is liable, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1726 of the Labor Code is amended to*
2 *read:*

3 1726. (a) The body awarding the contract for public work
4 shall take cognizance of violations of the provisions of this chapter
5 committed in the course of the execution of the contract, and shall
6 promptly report any suspected violations to the Labor
7 Commissioner.

8 ~~If~~

9 (b) *If the awarding body determines as a result of its own*
10 *investigation that there has been a violation of this chapter and*
11 *withholds contract payments, the procedures in Section 1771.6*
12 *shall be followed.*

13 (c) *A contractor may bring an action in a court of competent*
14 *jurisdiction to recover from an awarding body the difference*
15 *between the wages actually paid to an employee and the wages that*
16 *were required to be paid to an employee under this chapter, any*
17 *penalties required to be paid under this chapter as a result of an*
18 *awarding body, and costs and attorney’s fees related to this action,*
19 *if either of the following is true:*

20 (1) *The awarding body previously affirmatively represented to*
21 *the contractor in writing, in the call for bids, or otherwise, that the*
22 *work to be covered by the bid or contract was not a “public work,”*
23 *as defined in this chapter.*

24 (2) *The awarding body received actual written notice from the*
25 *Department of Industrial Relations that the work to be covered by*
26 *the bid or contract is a “public work,” as defined in this chapter,*
27 *and failed to disclose that information to the contractor before the*
28 *bid opening or awarding of the contract.*

29 SEC. 2. Section 1781 is added to the Labor Code, to read:

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, *subject to paragraphs (2) and (3)*, bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision *by the body, the Department of Industrial Relations, or a court* that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," ~~as defined in Section 1720, to which Section 1771 applies, provided that the body, before the bid opening or awarding of the contract, did any of the following:~~

~~(1) Previously affirmatively represented to the contractor in writing, in the call for bids or otherwise, that the work to be covered by the bid or contract is not a "public work," as defined in Section 1720.~~

~~(2) Received actual written notice from the Department of Industrial Relations that the work to be covered by the bid or contract is a "public work," as defined in Section 1720, and failed to disclose that fact to the contractor before the bid opening or awarding of the contract.~~

~~(3) Failed to identify as a "public work," as defined in Section 1720, in the bid specification or in the contract documents that portion of the work that a decision from the Department of Industrial Relations classifies as a "public work." work," as defined in this chapter, to which Section 1771 applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."~~

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract for the work described in paragraph (1) that the work was a "public work," as defined in this chapter, to which Section 1771 applies.

1 (C) *The body fulfilled all of its duties, if any, under the Civil*
2 *Code or any other provision of law pertaining to the body*
3 *providing and maintaining bonds to secure the payment of*
4 *contractors, including the payment of wages to workers*
5 *performing the work described in paragraph (1).*

6 (3) *If a contractor did not directly submit a bid to, or directly*
7 *contract with a body awarding a contract for, or otherwise*
8 *undertaking a public work, the liability of that body in an action*
9 *commenced by the contractor under subdivision (a) is limited to*
10 *that portion of a judgment, obtained by that contractor against the*
11 *body that solicited the contractor's bid or awarded the contract to*
12 *the contractor, that the contractor is unable to satisfy. For*
13 *purposes of this paragraph, a contractor may not be deemed to be*
14 *unable to satisfy any portion of a judgment unless, in addition to*
15 *other collection measures, the contractor has made a good faith*
16 *attempt to collect that portion of the judgment against a surety*
17 *bond, guarantee, or some other form of assurance.*

18 (b) *When construction has not commenced at the time a final*
19 *decision by the Department of Industrial Relations or a court*
20 *classifies all or part of the work covered by the bid or contract as*
21 *a "public work," as defined in Section 1720 this chapter, the body*
22 *that solicited the bid or awarded the contract shall rebid the*
23 *"public work" covered by the contract as a "public-work," work,*
24 *any bid that was submitted and any contract that was executed for*
25 *this work are null and void, and the contractor may not be*
26 *compensated for any nonconstruction work already performed*
27 *unless the body soliciting the bid or awarding the contract has*
28 *agreed to compensate the contractor for this work.*

29 ~~(c) Where the decision classifying all or part of the work~~
30 ~~covered by the contractor's bid or contract as a "public work," as~~
31 ~~defined in Section 1720, and entitling a contractor to bring an~~
32 ~~action for relief pursuant to this section is the result of a request for~~
33 ~~a determination filed with the Department of Industrial Relations,~~
34 ~~the party initiating the request for a determination shall be entitled~~
35 ~~to recover its reasonable legal fees and costs, if any, in the same~~
36 ~~action as a contractor, or by an action brought independently~~
37 ~~should the contractor elect not to initiate an action.~~

38 ~~(d)~~

39 (c) *For purposes of this section:*

1 (1) “Awarding body” does not include the Department of
2 General Services, the Department of Transportation, or the
3 Department of Water Resources.

4 (2) “Increased costs” includes, but is not limited to:

5 (A) Labor cost increases required to be paid to workers who
6 perform or performed work on the “public work” as a result of the
7 events described in subdivision (a).

8 (B) Penalties for a violation of this article for which the
9 contractor is liable, and which violation is the result of the events
10 described in subdivision (a).

